

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15,
16, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42,
43, 44, 45, 46, 47, 49, 52, and 53

[FAR Case 94-770]

RIN 9000-AG18

Federal Acquisition Regulation;
Simplified Acquisition Procedures/
FACNET

AGENCIES: Department of Defense (DOD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the new simplified acquisition and Federal Acquisition Computer Network (FACNET) requirements of the Federal Acquisition Streamlining Act of 1994 (the Act). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866 dated September 30, 1993.

DATES: *Comments:* Comments should be submitted on or before May 5, 1995 to be considered in the formulation of a final rule.

Public Meeting: A public meeting will be held on April 3, 1995, at 9:30 a.m. in the GSA Auditorium on the first floor of the GSA Building.

Oral and Written Statements: Persons wishing to make oral or written statements at the public meeting should submit to the FAR Secretariat a copy of the presentation by March 29, 1995.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR
Secretariat (VRS), 18th & F Streets,
NW, Room 4037, Washington, DC
20405.

Please cite FAR case 94-770 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT:
Diana Maykowskyj, Team Leader,
Simplified Acquisition Procedures/
FACNET Team, on (703) 274-6307 in
reference to this FAR case. For general
information, contact the FAR
Secretariat, Room 4037, GS Building,
Washington, DC 20405 (202) 501-755.
Please cite FAR Case 94-770, Simplified
Acquisition Procedures.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355, (the Act) provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include the areas of commercial item acquisition, simplified acquisition procedures, the Truth in Negotiation Act and FACNET.

The terms "simplified acquisition" and "Federal Acquisition Computer Network (FACNET)" are defined by the Federal Acquisition Streamlining Act of 1994 (the Act). The Act defines the simplified acquisition threshold as \$100,000. It limits use of simplified acquisition procedures by procurement activities not having certified Interim FACNET to procurements not exceeding \$50,000. Use of simplified acquisition procedures is also limited to procurements not exceeding \$50,000 if an agency does not have certified Full FACNET by January 1, 2000.

Review of the law and the proposed implementing rule requires that the difference between the simplified acquisition threshold and the use of simplified acquisition procedures be recognized. The simplified acquisition threshold is \$100,000. The authority to use simplified acquisition procedures depends on implementation and proper certification of FACNET.

This rule proposes to incorporate FAR Subpart 4.5 for FACNET information and guidance. FAR Subpart 4.5 provides definitions, certification information, and exemptions in accordance with the Act. FAR case 91-104 ("Electronic Commerce") and this implementation of the Act are interdependent and are meant to be considered jointly. Reviewers are advised that FACNET is not a single electronic system that will be used by all executive agencies. It is, however, a universal electronic capability that will permit potential contractors to, as a minimum, obtain information on proposed procurements, submit questions, and receive awards on a government-wide basis. Each agency will determine the system(s) that will be used by its procuring activities so that they can certify Interim FACNET for those activities and Full FACNET for the agency. The Act and the proposed rule also provide for exempting individual procurements and procuring activities from the use of FACNET. This becomes significant when agencies certify Full FACNET which is based, in part, on the percentage of non-exempt

transactions which were made through FACNET during the previous fiscal year.

Implementation of FACNET (Electronic Commerce) will include a vendor registration requirement for any business entity wishing to do business with the Government electronically. Contractor's information will be submitted to the Centralized Contractor Registration System in accordance with the Federal implementation conventions.

There are technical requirements and other procedures with respect to FACNET that are not appropriate for coverage in the FAR but are needed by executive agencies to fully implement FACNET. This information will be disseminated via other appropriate means.

Public Meeting. A public meeting will be held on April 3, 1995 at 9:30 a.m. in the GSA Auditorium to enable the public to present its views on this rule. This rule will only be discussed at the public meeting session. Any subsequent public meetings will be devoted to other revisions to the FAR. Persons or organizations wishing to make presentations will be allowed 10 minutes each to present their views, provided they notify the FAR Secretariat, at (202) 501-4755. Written statements for presentation should be submitted to the FAR Secretariat by March 29, 1995. Persons or organizations with similar positions are encouraged to select a common spokesman for presentation of their views. This meeting, in conjunction with the **Federal Register** notice soliciting public comments on the rule, will be the only opportunity for the public to present its views.

This rule overlaps in some areas with the "Electronic Commerce" rule (FAR case 91-104) appearing elsewhere in this issue of the **Federal Register**. Presenters are welcome to submit prepared statements concerning the "electronic commerce" rule to the extent that the statement has some interrelation with this simplified acquisition/FACNET rule.

Interested members of the public may obtain a copy of the desired rule from the FAR Secretariat, see **ADDRESSES** caption.

B. Regulatory Flexibility Act

The proposed rule may have a significant positive economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because it is designed to reduce the burden on entities desiring to do business with the Government and will apply to all large and small business

entities, and all educational and non-profit organizations who are interested in participating in Government acquisitions. The proposed rule establishes the simplified acquisition threshold and sets forth policies and guidance for the implementation of FACNET pursuant to the Act. The implementation of FACNET will provide for electronic exchange of acquisition information between the private sector and the Federal Government that will increase the opportunities for vendors currently doing business with the Government, particularly small businesses. As a result of the Act, procurements between \$2,500 and \$100,000 are exclusively reserved for small business. It is recognized that an initial start-up cost will be incurred for purchase of personal computer, modem, software, and telephone lines estimated to be \$1,500. Additionally, it is anticipated that most small businesses will subscribe to third party value added network (VAN) service to facilitate their communications with the Government's computers. The cost of advance subscription ranges from approximately \$30 to \$100 per month, depending on the type of services obtained. The benefit of increased business opportunities should far outweigh these initial start-up costs.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Council for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR case 94-770), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies because the proposed rule contains information collection requirements that need the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* Contractors will be required to electronically register with the Federal Contractor Registration System operated by the Defense Information Megacenter. The information to be provided electronically is information currently reported under several existing forms, including SF-129, Solicitation Mailing List Application, the SF-3881, ACH vendor/Miscellaneous Payment Enrollment Form, and the DD-2051, request for Assignment of a Commercial and Government Entity information

pertaining to their EDI capabilities. Establishment of a central registration system should eliminate the need to submit multiple registrations with each contracting office the contractor is doing business with.

A request for approval of a new information collection requirement concerning simplified acquisition procedures is being submitted to the OMB. Public comments concerning this request are invited through a **Federal Register** notice published elsewhere in this issue.

List of Subjects in 48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53

Government procurement.

Edward C. Loeb,

Deputy Project Manager for Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Chapter 1 is proposed to be amended as set forth below:

1. The authority citation for 48 CFR Parts 2, 3, 4, 5, 6, 8, 9, 13, 15, 16, 22, 23, 25, 27, 28, 29, 32, 36, 41, 42, 43, 44, 45, 46, 47, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Section 2.201 is revised to read as follows:

2.201 Contract clause.

The contracting officer shall insert the clause at 52.202-1, Definitions, in solicitations and contracts except when the contract is not expected to exceed the simplified acquisition threshold in Part 13. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I. Additional definitions may be included, provided they are consistent with the clause and the FAR.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.103-1 is amended by revising paragraph (a) to read as follows:

3.103-1 Solicitation provision.

(a) The acquisition is to be made under the simplified acquisition procedures in Part 13;

4. Section 3.104-10 is amended by revising paragraph (c) to read as follows:

3.104-10 Solicitation provision and contract clauses.

(c) The contracting officer shall insert the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, in all solicitations where the resultant contract award is expected to exceed the simplified acquisition threshold (see 13.000) and all contracts and modifications to contracts exceeding that threshold which do not already contain the clause when the modification is expected to exceed that threshold.

5. Section 3.404 is amended by revising paragraphs (b)(1) and (c) to read as follows:

3.404 Solicitation provision and contract clause.

(b) * * *

(1) The contract amount is expected to be at or below the simplified acquisition threshold in Part 13;

* * *

(c) The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in solicitations and contracts exceeding the simplified acquisition threshold.

6. Section 3.502-3 is revised to read as follows:

3.502-3 Contract clause.

The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in solicitations and contracts exceeding the simplified acquisition threshold in Part 13.

7. Section 3.503-2 is revised to read as follows:

3.503-2 Contract clause.

The contracting officer shall insert the clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold in Part 13.

PART 4—ADMINISTRATIVE MATTERS

8. Part 4 is amended by adding Subpart 4.5, consisting of sections 4.500 through 4.507, to read as follows:

Subpart 4.5—Electronic Commerce in Contracting

Sec.

4.500 Scope of subpart.

4.501 Definitions.

4.502 Policy.

4.503 Contractor registration.

4.504 FACNET functions.

4.505 FACNET certification.

- 4.505-1 Interim certification.
- 4.505-2 Full certification.
- 4.505-3 Governmentwide certification.
- 4.505-4 Contract actions excluded.
- 4.506 Exemptions.
- 4.507 Contract actions using simplified acquisition procedures.

4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of FACNET as required by Section 30 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 426).

4.501 Definitions.

"ANSI X12" means the designation assigned by the American National Standards Institute (ANSI) for the structure, format, and content of electronic business transactions conducted through Electronic Data Interchange (EDI). The American National Standards Institute is the coordinator and clearinghouse for national standards in the United States.

"Federal Acquisition Computer Network (FACNET)" means the governmentwide Electronic Commerce/Electronic Data Interchange systems architecture for the acquisition of supplies and services that provides for electronic data interchange of acquisition information between the government and the private sector, employs nationally and internationally recognized data formats, and provides universal user access.

"Full FACNET" means an agency has certified that it has implemented all of the FACNET functions outlined in 4.504 and more than 75 percent of eligible contracts (not otherwise exempted from FACNET) in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), were entered into by the agency during the preceding fiscal year using FACNET.

"Governmentwide FACNET" means that the Federal government has certified its FACNET capability and more than 75 percent of eligible contracts in amounts exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold (see Part 13), entered into by the executive agencies during the preceding fiscal year were made through full FACNET.

"Interim FACNET" means a contracting activity has been certified as having implemented a capability to provide widespread public notice of, and issue, solicitations and receive responses to solicitations and associated requests for information through FACNET. Such capability must allow the private sector to access notices of solicitations, access and review

solicitations, and respond to solicitations.

"Transaction Set" means the data that is exchanged to convey meaning between Trading Partners engaged in EC/EDI.

"Value-Added Network (VAN)" means an entity that provides communications services, electronic mailboxing and other communications services for EDI transmissions.

"Value-Added Service (VAS)" means an entity that provides services beyond communications to its customers. These services may range from translation and segregation of the data to complete turn-key business systems support for customers.

4.502 Policy.

(a) The Federal government shall acquire supplies and services via FACNET whenever practicable or cost effective.

(b) FACNET is the preferred method of acquiring supplies and services exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold (see 13.103(b)).

(c) Contracting officers are authorized to use FACNET for any contract action governed by the FAR, unless specifically exempted by agencies.

(d) Before using electronic data interchange, agencies shall ensure that the electronic data interchange system is capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

4.503 Contractor registration.

(a) In order for a contractor to conduct electronic commerce with the Federal government, the contractor must provide registration information to the Centralized Contractor Registration System.

(b) The contractor will be required to submit information in accordance with the Federal implementation conventions of the ASC ANSI X.12 transaction set for contractor registration.

4.504 FACNET functions.

(a) FACNET shall allow agencies to do the following electronically—

- (1) Provide widespread public notice of contracting opportunities, and issue solicitations;
- (2) Receive responses to solicitations and associated requests for information;
- (3) Provide public notice of awards of contracts and orders (including price);
- (4) Receive questions regarding solicitations, if practicable;
- (5) Issue contracts and orders, if practicable;

(6) Initiate payments to contractors, if practicable; and,

(7) Archive data relating to each procurement action.

(b) FACNET shall allow the private sector to do the following electronically:

- (1) Access notices of solicitations;
- (2) Access and review solicitations;
- (3) Respond to solicitations;
- (4) Receive contracts and orders, if practicable;
- (5) Access information on awards of contracts and orders; and,
- (6) Receive payment by purchase card, electronic funds transfer, or other automated means, if practicable.

4.505 FACNET certification.

4.505-1 Interim certification.

A contracting activity is considered to have implemented interim FACNET if:

(a) The contracting activity has implemented the FACNET functions described in 4.504(a) (1) and (2), and (b) (1), (2), and (3); and issues notices of solicitations and receives responses to solicitations in a system having those functions.

(b) The contracting activity is using FACNET for contracts (not otherwise exempted, see 4.506), that exceed the micro-purchase threshold and do not exceed the simplified acquisition threshold;

(c) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the Department of Defense, has certified to the Administrator of OFPP that the contracting activity has implemented interim FACNET.

(d) The senior procurement executive of the agency, or the Under Secretary of Defense for Acquisition and Technology for the Department of Defense, shall notify the private sector via the Commerce Business Daily that a contracting activity of the agency has certified interim FACNET. The notice shall establish a date after which it will be required that all responses to solicitations issued by the contracting activity through FACNET, must be submitted through FACNET, unless otherwise authorized.

4.505-2 Full certification.

An agency is considered to have implemented full FACNET if:

(a) The agency has implemented all of the FACNET functions described in 4.504; and

(b) During the preceding fiscal year, more than 75 percent of the agency's eligible contract actions, not otherwise exempted (see 4.506), that exceeded the micro-purchase threshold but did not exceed the simplified acquisition threshold were made via FACNET; and

(c) The head of the agency, with the concurrence of the Administrator of OFPP, has certified to the Congress that the agency has implemented full FACNET.

(d) Eligible contracts do not include any class or classes of contracts that the Federal Acquisition Regulatory Council determines, after October 13, 1997, are not suitable for acquisition through FACNET.

4.505-3 Governmentwide certification.

The Federal Government is considered to have implemented Governmentwide FACNET if:

(a) During the preceding fiscal year, at least 75 percent of eligible contracts entered into by executive agencies that exceeded the micro-purchase threshold and did not exceed the simplified acquisition threshold were made via full FACNET; and

(b) The Administrator of OFPP has certified implementation of governmentwide FACNET to the Congress.

4.505-4 Contract actions excluded.

For purposes of calculating the percentage of FACNET use referred to in 4.505-2 and 4.505-3, actions issued against established contracts, such as delivery orders, task orders, and in scope modifications shall not be included.

4.506 Exemptions.

The following contracts are exempted from the use of FACNET, as specified below, and shall not be considered when determining compliance with the requirements to implement FACNET:

(a) Interim FACNET.

(1) Classes of procurements exempted by the head of the contracting activity after a written determination is made that FACNET processing of those procurements is not cost effective or practicable; and specific purchases for which the contracting officer determines that it is not practicable or cost effective to process via FACNET. Such determinations shall be centrally maintained at the contracting activity.

(2) Contracts that do not require notice under subpart 5.202.

(b) Full FACNET—Contracts made by a contracting activity (or a portion of a contracting activity), if the activity is exempted from use of FACNET by the head of the agency or the Under Secretary of Defense for Acquisition and Technology for the Department of Defense. Any such exemption shall be based on a written determination that FACNET processing is not cost effective or practicable for the contracting activity, or portions thereof.

Determinations shall be maintained in the office of the senior procurement executive or the Under Secretary of Defense for Acquisitions and Technology for the Department of Defense.

4.507 Contract actions using simplified acquisition procedures.

Contracting officers shall refer to section 13.106 for evaluation and documentation requirements when awarding contracts using simplified acquisition procedures.

9. Section 4.800 is revised to read as follows:

4.800 Scope of subpart.

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files for all contractual actions. The application of this subpart to contracts made using the simplified acquisition procedures covered by Part 13 is optional. (See also documentation requirements in 13.106-2).

10. Section 4.804-1 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

4.804-1 Closeout by the office administering the contract.

(a) * * *

(1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.

(2) Files for firm-fixed-price contracts other than those using simplified acquisition procedures should be closed within 6 months after the date in which the contracting officer receives evidence of physical completion.

* * * * *

11. Section 4.804-2 is amended by revising paragraph (a) to read as follows:

4.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Contract files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by regulation.

* * * * *

12. Section 4.805 is amended in the table in paragraph (b) by revising the entries in the "Document" column of paragraphs (b)(5), (10), (11), and (13) to read as follows:

4.805 Storage, handling and disposal of contract files.

* * * * *

(b) * * *

Document	Retention period
(5) Unsuccessful offers or quotations that pertain to contracts using simplified acquisition procedures
(10) Records or documents other than those in paragraphs 4.805(b)(1)–(9) of this section pertaining to contracts using simplified acquisition procedures
(11) Records or documents other than those in paragraphs 4.805(b)(1)–(10) of this section pertaining to contracts using simplified acquisition procedures
(13) Solicited and unsolicited unsuccessful offers and quotations above the appropriate simplified acquisition threshold in Part 13

PART 5—PUBLICIZING CONTRACT ACTIONS

13. Section 5.002 is amended by revising paragraph (c) to read as follows:

5.002 Policy.

* * * * *

(c) Assist small business concerns, small disadvantaged business concerns, and women owned small businesses in obtaining contracts and subcontracts.

14. Section 5.101 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(2) introductory text and (a)(2)(ii) to read as follows:

5.101 Methods of disseminating information.

* * * * *

(a) As required by the Small Business Act (U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), and unless the contract action is being made by a contracting activity that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET and the contract action will be made through FACNET, contracting officers shall disseminate information on proposed contract actions as follows:

(1) For contract actions expected to exceed \$25,000, by synopsizing in the

Commerce Business Daily (CBD) (see section 5.201); and

(2) For proposed contract actions expected to exceed \$10,000 (\$5,000 for Defense activities), but not expected to exceed \$25,000, by displaying in a public place at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(c) and (f). The notice shall include a statement that all responsible sources may submit a quotation which, if timely received, shall be considered by the agency. Such information shall be posted not later than the date the solicitation is issued and remain posted for at least 10 days or until after quotations have been opened, whichever is later.

* * * * *

(ii) The contracting officer need not comply with the display requirements set forth above when the exemptions at 5.202(a)(1), (5) through (9) or (11) apply, or when oral solicitations are used. The exemption from display requirements does not relieve the contracting officer from the responsibility to consider all quotations timely received from responsible sources.

* * * * *

15. Section 5.202 is amended by adding paragraph (a)(13) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

13. The contract action is for an amount at or below \$250,000 and is made through certified FACNET after Governmentwide FACNET has been certified. This exception does not apply when the contract action is not made through certified FACNET. (see Subpart 4.5)

* * * * *

16. Section 5.203 is amended by redesignating paragraphs (b) through (f) as (c) through (g), adding a new paragraph (b) and revising newly designated (c), (d), and (e) to read as follows:

5.203 Publicizing and response time.

* * * * *

(b) The contracting officer shall establish a solicitation response time which will afford potential offerors a reasonable opportunity to respond for each contract action, including actions via FACNET, in an amount estimated to be greater than \$25,000, but not greater than the simplified acquisition threshold. The contracting officer should consider the circumstances of the individual procurement such as the

complexity, commerciality (see Part 12), availability, and urgency when establishing the solicitation response time.

(c) Agencies shall allow at least a 30 day response time for receipt of bids or proposals from the date of issuance of a solicitation if the contract action is expected to exceed the simplified acquisition threshold.

(d) Agencies shall allow at least a 30 day response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement if the contract action is expected to exceed the simplified acquisition threshold.

(e) Agencies shall allow at least a 45 day response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions categorized as research and development if the contract action is expected to exceed the simplified acquisition threshold.

* * * * *

17. Section 5.205 is amended by revising paragraph (d)(1) to read as follows:

5.205 Special situations.

* * * * *

(d) * * *

(1) Except when exempted by 5.202, synopses each proposed contract action for which the total fee (including phases and options) is expected to exceed \$25,000. Reference shall be made to the appropriate CBD Numbered Note.

* * * * *

18. Section 5.207 is amended by redesignating paragraphs (c)(2)(xi) through (c)(2)(xv) as (c)(2)(xii) through (c)(2)(xvi), adding new paragraph (c)(2)(xi), and revising newly redesignated (c)(2)(xiv) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(c) * * *

(2) * * *

(xi) For a contract action in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold, enter (A) a description of the procedures to be used in awarding the contract (e.g., request for quotation or solicitation) and (B) the anticipated award date.

* * * * *

(xiv) In the case of noncompetitive contract actions insert a statement of the reason justifying other than full and

open competition, and identify the intended source(s) (see 5.207(e)(3)).

* * * * *

19. Section 5.301 is amended by adding a new (b)(7) to read as follows:

5.301 General.

* * * * *

(b) * * *

(7) The contract action is for an amount greater than \$25,000 but not greater than the simplified acquisition threshold, the contract action is made by a contracting activity that has been certified as having implemented a system with interim (until December 31, 1999) or full (after December 31, 1999) FACNET, and the contract action has been made through FACNET.

* * * * *

20. Section 5.303 is amended by revising the introductory text of paragraph (b) to read as follows:

5.303 Announcement of contract awards.

* * * * *

(b) *Local announcement.* Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards in excess of the simplified acquisition threshold in 13.000, they shall include—

* * * * *

21. Section 5.503 is amended by revising paragraph (c)(1), to read as follows:

5.503 Procedures.

* * * * *

(c) *Forms.* (1) When contracting directly with the media for advertising, contracting officers:

(i) Shall use Standard Form 26, Award/Contract, or Standard Form 1447, Solicitation/Contract, when the dollar amount of the acquisition exceeds the simplified acquisition threshold; or

(ii) May use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dollar amount of the acquisition does not exceed the threshold for use of simplified acquisition procedures (see Part 13).

* * * * *

PART 6—COMPETITION REQUIREMENTS

22. Section 6.001 is amended by revising paragraph (a) to read as follows:

6.001 Applicability.

* * * * *

(a) Contracts awarded using the simplified acquisition procedures of Part 13;

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

23. Section 8.203-1 is amended by revising paragraph (a)(1) to read as follows:

8.203-1 Contract clause and solicitation provision.

(a) * * *

(1) Contract actions not exceeding the simplified acquisition threshold under Part 13;

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

* * * * *

24. Section 9.405-2 is amended by revising the second sentence of paragraph (b) introductory text to read as follows:

9.405-2 Restrictions on subcontracting.

* * * * *

(b) * * * Contractors shall not enter into any subcontract in excess of the simplified acquisition threshold with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. * * *

* * * * *

25. Section 9.409 is revised to read as follows:

9.409 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibilities Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds the simplified acquisition threshold.

26. Section 9.507-1 is amended by revising paragraph (c) to read as follows:

9.507-1 Solicitation provisions.

* * * * *

(c) The contracting officer shall insert the provision at 52.209-8, Organizational Conflicts of Interest Certificate—Advisory and Assistance Services, in solicitations for advisory and assistance services if the contract is expected to exceed the simplified acquisition threshold.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

27. 13.000 is revised to read as follows.

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction and research and development, the aggregate amount of which does not exceed the simplified acquisition threshold (see 13.103(b)). See 36.602-5 for simplified procedures to be used when acquiring architect-engineering services.

28. 13.101 is amended by revising the definitions of "bulk funding," "delivery order," and "purchase order,"; removing the definitions of "small purchase," and "small purchase procedures," and adding, in alphabetical order, definitions for "imprest fund," "simplified acquisition procedures," and "simplified acquisition threshold".

13.101 Definitions.

"Bulk funding," means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligation authority on each purchase document.

"Delivery Order," means an order for supplies or services placed against an established contract or with Government sources of supply.

* * * * *

"Imprest Fund," means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

* * * * *

"Purchase order," as used in this part, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

"Simplified acquisition procedures," means the methods prescribed in this part for making purchases of supplies or services using imprest funds, purchase orders, blanket purchase agreements, governmentwide commercial purchase cards, FACNET or any other appropriate authorized method. Contracting Officers are encouraged to use innovative

approaches in awarding contracts using the simplified acquisition procedures under the authority of Part 13. For example, the procedures of other FAR Parts may, as appropriate, be adapted for use in awarding contracts under this part. Other FAR Parts that may be adapted include, but are not limited to, (1) Part 14, Sealed Bidding; (2) Part 15, Contracting by Negotiation; (3) Part 12, Acquisition of Commercial Items; or (4) Part 36, Construction and Architect-Engineer Contracts, including the use of Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)).

"Simplified acquisition threshold," means \$100,000 (but see 13.103(b)). In the case of any DoD acquisition to be awarded and performed, or purchase to be made, outside the United States in support of a military contingency operation (10 U.S.C. 101(a)(13)), the term means \$200,000.

29. 13.102 is revised to read as follows:

13.102 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to (a) reduce administrative costs; (b) improve opportunities for small business, small disadvantaged business, and women owned small business concerns to obtain a fair proportion of Government contracts; (c) promote efficiency and economy in contracting; and, (d) avoid unnecessary burdens for agencies and contractors.

30. 13.103 is revised to read as follows:

13.103 Policy.

(a) Simplified acquisition procedures shall be used to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold unless requirements can be met by using required sources of supply (see Part 8).

(b) Simplified acquisition procedures may not be used for contract actions exceeding \$50,000, and not exceeding the simplified acquisition threshold, unless the contracting activity making the purchase has been certified as having interim FACNET. The contracting activity shall not use simplified acquisition procedures for contract actions exceeding \$50,000 after December 31, 1999, unless the activity's cognizant agency has certified full FACNET capability pursuant to section 4.505-2.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated

to exceed the simplified acquisition threshold even though resulting awards do not exceed that threshold. Requirements aggregating more than the simplified acquisition threshold shall not be broken down into several purchases that are less than the threshold merely to permit negotiation under simplified acquisition procedures.

(d) Simplified acquisition procedures may be used to acquire personal services if the agency has specific statutory authority to acquire personal services (see 37.104).

(e) FACNET is the preferred means for effecting the acquisition of supplies and services, including construction and research and development, in amounts exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold.

(f) Contracting officers shall establish deadlines for the submission of responses to solicitations which afford contractors a reasonable opportunity to respond.

31. 13.104 is revised to read as follows:

13.104 Procedures.

(a) Contracting officers shall make awards under this part in the simplified manner that is most suitable, efficient, and economical in the circumstances of each acquisition. Contracting officers may use the procedures in this part in acquisitions from Government supply sources (see Part 8), if their use is authorized by the basic contract or concurred in by the source.

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or-none" basis if suppliers are so advised when quotations are requested.

(c) Agencies shall use bulk funding to the maximum extent practicable to reduce processing time, handling, and documentation. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

(d) Agencies shall inspect items or services acquired under simplified acquisition procedures as prescribed in section 46.404.

(e) Agencies shall use United States-owned foreign currency, if appropriate, in making payments when using simplified acquisition procedures (see Subpart 25.3).

(f) For proposed purchases covered by this part, see 5.101 for public display requirements.

32. 13.105 is revised to read as follows:

13.105 Small Business Set-asides.

(a) Except as provided in paragraphs (b), (c), and (d), of this section, each acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold (see Subpart 13.6) and not exceeding \$100,000, is reserved exclusively for small business concerns and shall be set-aside (see 19.503-3).

(b) The requirements of this section apply only to purchases in the United States, its territories and possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see 19.000). Foreign concerns shall not be solicited or awarded acquisitions reserved for small business concerns.

(c) The requirements of this section do not affect the responsibility of agencies to make purchases from required sources of supply, such as Federal Prison Industries, Committee for Purchase from People who are Blind or Severely Disabled, and Federal Supply Schedule contracts.

(d)(1) Each written solicitation under a small business set-aside shall contain the provision at 52.219-6, Notice of Total Small Business Set-Aside. If the solicitation is oral, however, information substantially identical to that which is in the provision shall be given to potential quoters.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible small business concerns that will be competitive in terms of market price, quality, and delivery, the contracting officer need not proceed with the small business set-aside and may purchase on an unrestricted basis. If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with the small business set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.402.

(3) If the contracting officer proceeds with the set-aside and receives a quotation from only one responsible small business concern at a reasonable price (see 13.106-2(a)), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from a responsible small business concern, the contracting officer may cancel the set-aside and complete the purchase on an unrestricted basis.

(4) When proceeding under 13.105(d)(1) or (2), the contracting officer shall ascertain the availability of small business suppliers by telephone or other informal means (see 13.106-1(a)(7)).

(5) If the purchase is on an unrestricted basis under 13.105(d)(2), the contracting officer shall document in the file the reason for the unrestricted purchase.

(6) Nothing in this section 13.105 shall preclude award, using simplified acquisition procedures, of an acquisition exceeding the micro-purchase threshold and not exceeding \$50,000 (\$100,000 when FACNET has been implemented) under:

(i) 19.8, Contracting with the Small Business Administration;

(ii) 19.1006(c), emerging small business set-asides; or

(iii) 19.503-2, as a small disadvantaged business set-aside.

(7)(i) Acquisitions exceeding the micro-purchase threshold in Subpart 13.6 and not in excess of \$25,000 for supplies and services in the four designated industry groups pursuant to the Small Business Competitiveness Demonstration Program (see 19.10) are set-aside for emerging small businesses.

(ii) For acquisitions exceeding \$25,000 in the four designated industry groups pursuant to the Small Business Competitiveness Demonstration Program, see 19.10.

33. 13.106 text is removed and the heading is revised to read as follows:

13.106 Purchases exceeding the micro-purchase threshold.

34. 13.106-1 is added to read as follows:

13.106-1 Soliciting competition, evaluation of quotes, and award.

(a) *Soliciting competition.* (1) Contracting officers shall solicit a reasonable number of sources to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the Government, based, as appropriate on either price alone, or price and other factors (e.g., past performance and quality considered, including the administrative cost of the purchase). Requests for quotations or solicitations shall notify suppliers that award is to be made based on price alone, or price and other factors.

(2) FACNET is the preferred method of soliciting and awarding simplified acquisitions. However, if FACNET is not available, or the contracting officer has made a determination that it is not practicable or cost effective to process a specific purchase via FACNET, or the head of the contracting activity has made a determination that it is not practicable or cost effective to process a class of purchases via FACNET (see Subpart 4.506), quotations may be solicited through other appropriate

means. Requests for quotations should be solicited orally to the maximum extent practicable for contract actions not to exceed \$25,000 when FACNET is not available or a determination has been made that it is practicable or cost effective to purchase via FACNET. Paper solicitations for contract actions not expected to exceed \$25,000 should only be issued when obtaining electronic or oral quotations is not considered economical or practical. Solicitations for construction contracts over \$2,000 shall only be issued electronically or by paper solicitation.

(3) When not soliciting quotations electronically, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the trade area in which the contracting office is located for actions that do not exceed \$25,000. Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable if the contract action does not exceed \$25,000. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. The following factors influence the number of quotations required in connection with any particular purchase:

- (i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.
- (ii) Information obtained in making recent purchases of the same or similar item.
- (iii) The urgency of the proposed purchase.
- (iv) The dollar value of the proposed purchase.
- (v) Past experience concerning specific dealers' prices.

(4) Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source being reasonably available (e.g., only one available source, urgency).

(5) Contracting officers shall not limit solicitations to suppliers of well known and widely distributed makes or brands, nor shall quotations be solicited on a personal preference basis. If required to maintain a list of sources, new supply sources disclosed through trade journals or other media, shall be continuously reviewed and, if appropriate, added to the list.

(6) Consistent with the applicable principles in 14.407-3, contracting officers shall make every effort to obtain trade and prompt payment discounts. However, prompt payment discounts

shall not be considered in the evaluation of quotations.

(7)(i) Unless exempted from this requirement by the head of the contracting activity or purchases are made through FACNET, each contracting office should maintain a source list (or lists, if more convenient) and should record on the list the status of each source (when the status is made known to the contracting office) in the following categories:

- (A) Small business.
- (B) Small disadvantaged business.
- (C) Women-owned small business.

(ii) The status information should be used to ensure that small business concerns are given opportunities to respond to solicitations issued using simplified acquisition procedures.

(b) *Evaluation of quotes.* (1) Contracting officers may evaluate quotations or offers based on price alone or price and other factors (e.g., past performance, or quality). When evaluating quotations or offers on price and other factors, contractor's quotations or offers shall be evaluated solely on the basis of criteria established in the solicitation. Methods to accomplish this may include, but are not limited to simplified solicitations, streamlined evaluation methods, and award with simplified award documentation. Formal evaluation plans, conduct of discussions and scoring of quotes or offers are not required. Evaluation of other factors does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge, previous experience, or customer surveys.

(2) If suppliers furnish standing price quotations on supplies or services required on an intermittent and recurring basis, the information may be used in lieu of obtaining individual quotations each time a purchase is contemplated. The buyer shall ensure that the price information is current and that the Government obtains the benefit of maximum discounts.

(3) Contracting officers shall evaluate quotations inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(4) Contracting officers shall comply with the policy in section 7.202 relating to economic purchase quantities, when practicable.

(c) *Award.* (1) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantities required. In these instances,

the contracting officer should inform the requiring activity of all facts regarding the quotation and request it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) Notification to unsuccessful suppliers shall be given only if requested. When a supplier requests information on an award which was based on other than price alone, the notification shall include a brief explanation of the basis for the contract award decision.

35. 13.106-2 is added to read as follows:

13.106-2 Data to support purchases.

(a) The determination that a proposed price is reasonable should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file giving the basis of the determination of fair and reasonable price. The determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being purchased or any other reasonable basis.

(b) When other than price related factors are considered in selecting the supplier (see 13.106-1(b)(1)), the contracting officer shall document the file to support the final contract award decision.

(c) If only one source is solicited, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source or of educational services from nonprofit institutions.

(d) Simplified documentation practices should be used. The following illustrate the extent to which quotation information should be recorded.

(1) *Oral solicitations.* The contracting office should establish and maintain informal records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) *Written* (see 2.101) solicitations. Written records of solicitations may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or

suppliers contacted, and other pertinent data.

(e) Purchasing offices shall retain data supporting purchases using simplified acquisition procedures to the minimum extent and duration necessary for management review purposes. (See Subpart 4.8)

36. 13.107 is revised to read as follows:

13.107 Solicitation forms.

(a) Except when quotations are solicited via FACNET or orally, Standard Form 18, Request for Quotations (illustrated in 53.301-18), is available, but not required, for use by all agencies.

(b) Optional Form 336, Continuation Sheet, may be used with Standard Form 18 when additional space is needed.

(c) If Standard Form 18 is not used for written solicitations, contracting officers may request quotations using an agency-designed form, an agency-approved automated format, or electronically.

(d) Each agency-designed request for quotations form shall conform with Standard Form 18, insofar as practical.

(e) When using an unsigned electronic purchase orders (see 13.506) for transmission of a request for quotations, the provisions and clauses applicable to the solicitation shall be incorporated by reference.

37. 13.108 is revised to read as follows:

13.108 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract (see 15.402(e)). Therefore, issuance by the Government of an order for supplies or services in response to a suppliers quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer or begins performance.

(b) When appropriate, the contracting officer may request the supplier to indicate acceptance of an order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.504 for

procedures on termination or cancellation of purchase orders.)

38. 13.109 is revised to read as follows:

13.109 Agency use of indefinite delivery contracts.

Costs and processing time for acquisitions at or below the simplified acquisition threshold may be reduced through the use of indefinite delivery contracts (see Subpart 16.5) that permit delivery orders to be placed by several contracting or ordering offices in one or more executive agencies. Therefore contracting offices are encouraged to seek opportunities to cooperate with each other to achieve efficiency and economy through the use of indefinite delivery contracts.

39. 13.110 is added to read as follows:

13.110 Federal Acquisition Streamlining Act of 1994 (FASTA) list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57(a) & (b) (Anti-Kickback Act of 1986) (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) 40 U.S.C. 27 (Miller Act) (but see Part 28)

(3) 40 U.S.C. 329 (Contract Work Hours and Safety Standards Act—Overtime Compensation)

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug Free Workplace Act of 1988)

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act) (Only the requirement for providing the estimate of material utilized for the performance of the contract which is recovered materials is inapplicable.)

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees.)

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors.)

(8) 10 U.S.C. 2384(b) (Requirement to Identify Suppliers and Sources of Supply.)

(9) 10 U.S.C. 2393(d) (Prohibition Against Doing Business with Certain Offerors or Contractors.)

(10) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States.)

(11) 10 U.S.C. 2408(a) (Prohibition on Persons Convicted of Defense Related Felonies.)

(12) 10 U.S.C. 2410b (Contractor Inventory Accounting System Standards.)

(13) 10 U.S.C. 2534 (Miscellaneous Procurement Limitations.)

(b) The Federal Acquisition Regulatory Council will include any law enacted after October 13, 1994 that sets forth policies, procedures, requirements, or restrictions for the procurement of property or services on the list set forth in 13.110(a), unless the FAR Council makes a written determination that it is in the best interests of the government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of 13.110(b) do not apply to laws that:

(1) provide for criminal or civil penalties; or

(2) specifically state that notwithstanding the language of Section 4101, Pub. L. 103-355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator for Federal Procurement Policy to include any applicable provision of law not included on the list set forth in 13.110(a) unless the FAR Council has already determined in writing that the law is applicable.

(e) The Administrator of OFPP will include the law on the list in 13.110(a) unless the FAR Council makes a determination that it is applicable within sixty days of receiving the petition.

40. Subpart 13.2 is revised to read as follows:

Subpart 13.2—Blanket Purchase Agreements

Sec.

13.201 General.

13.202 [Reserved]

13.203 Establishment of Blanket Purchase Agreements.

13.203-1 General.

13.203-2 Clauses.

13.204 Purchases under Blanket Purchase Agreements.

13.205 Review procedures.

13.206 Completion of Blanket Purchase Agreements.

13.201 General.

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).

(b) BPAs should be established at the appropriate level responsible for

providing supplies for its own operations or for other offices, installations, projects, or functions. Such levels, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt the agency from the responsibility for keeping obligations and expenditures within available funds, but this should be done by using simplified methods and by avoiding formal fiscal recording of individual deliveries and transactions.

13.202 [Reserved]

13.203 Establishment of Blanket Purchase Agreements.

13.203-1 General.

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) If there is a wide variety of items in a broad class of goods (e.g., hardware) that are generally purchased but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) If there is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) In any other case in which the writing of numerous purchase orders can be avoided through the use of this procedure.

(b) A BPA should be established without a purchase requisition.

(c) A BPA shall not cite accounting and appropriation data (but see 13.204(e)(4)).

(d) BPAs should be made with firms from which numerous individual purchases will likely be made in a given period. For example, if past experience has shown that certain firms are dependable and consistently lower in price than other firms dealing in the same commodities, and if numerous purchases at or below the simplified acquisition threshold are usually made from such suppliers, it would be advantageous to establish BPAs with those firms.

(e) To the extent practical, BPAs for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under BPAs.

(f) BPAs may also be established with Federal Supply Schedule contractors and GSA Nonmandatory ADP Schedule contractors (see Part 39), if not

inconsistent with the terms of the applicable schedule contract.

(g) If it is determined that BPAs would be advantageous, suppliers should be contacted to make the necessary arrangements for securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details.

(h) A BPA may be limited to furnishing individual items or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(i) BPAs shall be prepared and issued on any agency-authorized purchase order form.

(j) BPAs shall contain the following terms and conditions:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.204(b)).

(4) *Notice of individuals authorized to purchase under the BPA and dollar limitations by title of position or name.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(5) *Delivery tickets.* A requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information:

(i) Name of supplier.

(ii) BPA number.

(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(6) *Invoices.* One of the following statements (except that the statement in paragraph (j)(6)(iii) of this section should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated; provided, that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(k) BPAs in which the fast payment procedure is used shall include the requirements stated under 13.303(b).

13.203-2 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in the FAR that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise, (e.g., see 22.305(a)(1), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.204 Purchases under Blanket Purchase Agreements.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the blanket purchase agreement, being a method of

simplifying the making of individual purchases, shall not be used to avoid the simplified acquisition threshold.

(b) Unless otherwise specified in agency regulations, individual purchases under BPAs, except those BPAs established in accordance with 13.203-1(f), shall not exceed (i) \$50,000, or (ii) \$100,000 when the procuring activity has certified interim FACNET (see 13.103(b)).

(c) The existence of a BPA does not justify purchasing from only one source or avoiding small business set-asides. The requirements of 13.105 and 13.106 also apply to each order under a BPA.

(d) If there is an insufficient number of BPAs to ensure maximum practicable competition for a particular purchase, the contracting officer shall—

(1) Solicit quotations from other sources and make the purchase as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if (i) recurring requirements for the same or similar items or services seem likely, (ii) qualified sources are willing to accept BPAs, and (iii) it is otherwise practical to do so.

(e) Documentation of purchases under BPAs shall be limited to essential information and forms, as follows:

(1) Purchases under BPAs generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.

(2) A paper purchase document may be issued if written communications are necessary to ensure that the vendor and the purchaser agree concerning the transaction.

(3) If a paper document is not issued, the essential elements (e.g., date, vendor, items or services, price, delivery date) shall be recorded on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(4) Documentation of individual purchases under BPAs shall also cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the vendor's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the items or services. However, if the purchase is assigned to another activity for administration, receipt and acceptance of supplies or services shall be documented by signature and date on the agency specified form by the authorized Government representative after verification and notation of any exceptions.

13.205 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) of this section are being followed.

13.206 Completion of Blanket Purchase Agreements.

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

41. Subpart 13.3 is revised to read as follows:

Subpart 13.3—Fast Payment Procedure

Sec.

13.301 General.

13.302 Conditions for use.

13.303 Preparation and execution of orders.

13.304 Responsibility for collection of debts.

13.305 Contract clause.

13.301 General.

The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a representation that—

(a) The supplies have been delivered to a post office, common carrier, or point of first receipt by the Government; and

(b) The contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

13.302 Conditions for use.

If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure

is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

(a) Individual orders do not exceed \$25,000 except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance. Use of the fast payment procedure would not be indicated, for example, for small purchases by an activity if material being purchased is destined for use at that activity and contract administration will be performed by the purchasing office at that activity.

(c) Title to the supplies will vest in the Government (1) upon delivery to a post office or common carrier for mailing or shipment to destination, or (2) upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure (1) documenting evidence of contractor performance under fast payment acquisitions, (2) timely feedback to the contracting officer in case of contractor deficiencies, and (3) identification of suppliers who have a current history of abusing the fast payment procedure. (Also see Subpart 9.1.)

13.303 Preparation and execution of orders.

(a) Except when orders are placed via FACNET, orders incorporating the fast payment procedure should be issued on Optional Form 347, Order for Supplies or Services, or other agency authorized purchase order form (but see 13.204(e) for purchases under BPAs). Orders may be either priced or unpriced.

(b) Contracts, purchase orders, or BPAs using the fast payment procedure shall include the following:

(1) A requirement that the supplies be shipped transportation or postage prepaid.

(2) A requirement that invoices be submitted directly to the finance or other office designated in the order, or

in the case of unpriced purchase orders, to the contracting officer (see 13.502(c)).

(3) The following statement on consignee's copy:

Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

(4) A requirement that the contractor mark outer shipping containers "FAST PAY."

13.304 Responsibility for collection of debts.

The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

13.305 Contract clause.

The contracting officer shall insert the clause at 52.213-1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.302 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPAs, the contracting officer may elect to insert the clause either in the BPA or in orders under the BPA).

42. Subpart 13.4 is revised to read as follows:

Subpart 13.4—Imprest Fund

Sec.

- 13.401 General.
- 13.402 Agency responsibilities.
- 13.403 Conditions for use.
- 13.404 Procedures.

13.401 General.

This subpart prescribes policies and procedures for using imprest funds to purchase supplies or services. Related policies and regulations concerning the establishment of and accounting for imprest funds, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies shall also be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.402 Agency responsibilities.

Each agency using imprest funds shall—

(a) Periodically review and determine whether there is continuing need for each fund established, and that amounts of those funds are not in excess of actual needs;

(b) Take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—

(1) Designation of personnel authorized to make purchases using imprest funds; and

(2) Documentation of purchases using imprest funds, including documentation of (i) receipt and acceptance of supplies and services by the Government, (ii) receipt of cash payments by the suppliers, and (iii) cash advances and reimbursements.

13.403 Conditions for use.

Imprest funds may be used for purchases when—

(a) the transaction does not exceed \$500 or such other limits as have been approved by the agency head;

(b) the use of imprest funds is considered to be advantageous to the Government; and

(c) the use of imprest funds for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.402.

13.404 Procedures.

(a) Each purchase using imprest funds shall be based upon an authorized purchase requisition.

(b) Normally, orders to suppliers should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Purchases shall be distributed equitably among qualified suppliers (see 13.105).

(d) Prompt payment discounts shall be solicited.

(e) Any agency-authorized purchase order form or Standard Form 1165, Receipt for Cash-Subvoucher, may be used if a written order is considered necessary; e.g., if required by the supplier for discount, tax exemption, or other reasons. If a purchase order is used for this purpose, it shall be endorsed "Payment to be made from Imprest Fund."

(f) The individual authorized to make purchases using imprest funds shall—

(1) Furnish to the imprest fund cashier a copy of the purchase

requisition annotated to reflect (i) that an imprest fund purchase has been made, (ii) the unit prices and extensions, (iii) the supplier's name and address, and (iv) the date of anticipated delivery; and

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving (i) the supplier's name and address, (ii) list and quantity of items, (iii) unit prices and extensions, and (iv) cash discount, if any.

43. Subpart 13.5 is revised to read as follows:

Subpart 13.5—Purchase Orders

Sec.

- 13.501 General.
- 13.502 Unpriced purchase orders.
- 13.503 Obtaining contractor acceptance and modifying purchase orders.
- 13.504 Termination or cancellation of purchase orders.
- 13.505 Purchase order and related forms.
- 13.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.
- 13.505-2 [Reserved]
- 13.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.
- 13.506 Unsigned electronic purchase orders.
- 13.507 Provisions and clauses.
- 13.508 Use of options in acquisitions using simplified acquisition procedures.

13.501 General.

(a) Except as provided under the unpriced purchase order method (see 13.502), purchase orders shall be issued on a fixed-price basis unless otherwise authorized by agency procedures.

(b) Purchase orders shall include any trade and prompt payment discounts that are offered, consistent with the applicable principles in 14.407-3.

(c) Purchase orders shall specify the quantity of supplies or services ordered.

(d) Inspections under simplified acquisition procedures shall be as prescribed in Part 46. Orders generally shall provide that inspection and acceptance will be at destination and source inspection should be specified only if required by Part 46. If inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material.

(e) F.o.b. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

(f) Each purchase order shall contain a determinable date by which delivery

of supplies or performance of services is required.

(g) The contracting officer's signature on purchase orders shall be in accordance with 4.101. Facsimile signature may be used in the production of purchase orders by automated methods.

(h) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

13.502 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

(1) It is anticipated that the transaction will not exceed

(i) \$50,000, or (ii) \$100,000 when the contracting activity of an agency has certified interim or full FACNET (see 13.103(b)).

(2) It is impractical to obtain pricing in advance of issuance of the purchase order; and

(3) The purchase is for—

(i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;

(ii) Material available from only one source and for which cost cannot be readily established; or

(iii) Supplies or services for which prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued by using written purchase orders or electronically (see 13.506). A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow-up each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see 13.106-2(a)), process the invoice for payment.

13.503 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written acceptance of the purchase order by the contractor.

(b) A purchase order may be modified by use of

(1) Standard Form 30, Amendment of Solicitation/Modification of Contract;

(2) An agency-designed form or an agency-approved automated format; or

(3) A purchase order form, if not prohibited by agency regulations.

(c) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(d) Contracting officers need not obtain a contractor's written acceptance of a purchase order modification, unless the written acceptance is—

(1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or

(2) Required by agency regulations.

13.504 Termination or cancellation of purchase orders.

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination action as prescribed by Part 49.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required; i.e., the purchase order shall be considered canceled.

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed by Part 49.

13.505 Purchase order and related forms.

13.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

(a) Optional Form 347 (illustrated in 53.302-347) and Optional Form 348 (illustrated in 53.302-348) are multipurpose forms designed for the following:

(1) Negotiated purchases of supplies or services.

(2) Delivery orders.

(3) Inspection and receiving reports.

(4) Invoices.

(b) Agencies may use order forms other than Optional Form 347 and 348 and may print on those forms the clauses they consider to be generally

suitable for their purchases using simplified acquisition procedures. The clauses may include agency clauses, if they do not conflict with clauses prescribed by the FAR and are designated as agency clauses.

13.505-2 [Reserved]

13.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) Standard Form 44, Purchase Order-Invoice-Voucher (illustrated in 53.301-44) is a pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher.

(b) Standard Form 44 may be used if all of the following conditions are satisfied:

(1) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of a military contingency operation. Agencies may establish higher dollar limitations for specific activities or items.

(2) The supplies or services are immediately available.

(3) One delivery and one payment will be made.

(4) Its use is determined to be more economical and efficient than use of other simplified acquisition methods.

(c) General procedural instructions governing the use of Standard Form 44 are printed on the form and on the inside front cover of each book of forms.

(d) Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, clauses are not required for purchases using this form.

(e) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.506 Unsigned electronic purchase orders.

(a) An unsigned electronic purchase order (EPO) may be issued when the following conditions are present—

(1) Its use is more advantageous to the Government than any other simplified acquisition method;

(2) It is acceptable to the supplier;

(3) It is approved by the contracting officer;

(4) It does not require written acceptance by the supplier; and

(5) The purchasing office retains all contract administration functions.

(b) When an unsigned EPO is used—

(1) Appropriate clauses shall be incorporated by reference;

(2) Administrative information that is not needed by the supplier shall be placed only on copies intended for internal distribution;

(3) The same distribution shall be made of the unsigned EPO as is made of signed purchase orders; and

(4) No purchase order form is required.

(c) An unsigned EPO may be unpriced if it meets the conditions in 13.502.

13.507 Provisions and clauses.

(a) Each purchase order (and each purchase order modification (see 13.503)) shall incorporate all clauses required for or applicable to the particular acquisition.

(b) The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (i.e., any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.

(d) Pursuant to Pub.L. 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

(1) 28.102-4, Miller Act solicitation requirements. However, Part 28 sets forth alternatives to payment bonds as payment protections for suppliers of labor and materials for contracts exceeding \$25,000, but not exceeding \$100,000.

(2) 52.203-1, Officials Not to Benefit

(3) 52.203-4, Contingent Fee Representation and Agreement

(4) 52.203-5, Covenant Against Contingent Fees

(5) 52.203-6, Restrictions on Subcontractor Sales to the Government

(6) 52.203-7, Anti-Kickback Procedures

(7) 52.215-1, Examination of Records by Comptroller General

(8) 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation

(9) 52.223-5, Certification Regarding a Drug-Free Workplace

(10) 52.223-6, Drug-Free Workplace

13.508 Use of options in acquisitions using simplified acquisition procedures.

Options may be included in acquisitions using simplified acquisition procedures provided that the requirements of subpart 17.2 are met and that the aggregate value of the acquisition and all options does not

exceed the dollar threshold for use of simplified acquisition procedures under this part.

PART 15—CONTRACTING BY NEGOTIATION

44. Section 15.106-1 is amended by revising paragraph (b)(1) to read as follows:

15.106-1 Examination of Records clause.

* * * *

(b) * * *

(1) The contract amount is at or below the simplified acquisition threshold;

* * * *

45. Section 15.106-2 is amended by revising the first sentence in paragraph (b) to read as follows:

15.106-2 Audit-Negotiation clause.

* * * *

(b) The contracting officer shall insert the clause at 52.215-2, Audit-Negotiation, in solicitations and contracts when contracting by negotiation, unless the acquisition is made under simplified acquisition procedures. * * *

46. Section 15.401 is amended by revising paragraph (a) to read as follows:

15.401 Applicability.

* * * *

(a) Acquisitions made under simplified acquisition procedures (see Part 13.); and

* * * *

47. Section 15.602 is amended by revising paragraph (b) to read as follows:

15.602 Applicability.

* * * *

(b) This subpart does not apply to acquisitions made under simplified acquisition procedures (see Part 13.).

48. Section 15.804-2 is amended by revising paragraphs (a)(4) and (5) to read as follows:

15.804-2 Requiring certified cost or pricing data.

(a) * * *

* * * *

(4) The contracting officer shall not require certified cost or pricing data when awarding a contract below the simplified acquisition threshold in Part 13.

(5) When certified cost or pricing data are not required, the contracting officer may request partial or limited data to determine a reasonable price.

* * * *

49. Section 15.812-2 is amended by revising paragraph (a)(1) to read as follows:

15.812-2 Contract clause.

(a) * * *

(1) Acquisitions at or below the simplified acquisition threshold;

* * * *

50. Section 15.1001 is amended by revising the first sentence of paragraph (b)(1) and paragraphs (c)(1) introductory text and (3) amended to read as follows:

15.1002 Notification to unsuccessful offerors.

* * * *

(b) *Preaward notices.* (1) When the proposal evaluation period for a solicitation not using simplified acquisition procedures in Part 13 is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. * * *

* * * *

(c) *Postaward notices.* (1) After award of contracts resulting from solicitations not using simplified acquisition procedures, the contracting officer shall notify unsuccessful offerors in writing or electronically, unless preaward notice was given under paragraph (b) of this section. The notice shall include—

* * * *

(3) Upon request, the contracting officer shall furnish the information described in 15.1002(c)(1) (i) through (v) to unsuccessful offerors in solicitations using simplified acquisition procedures in Part 13.

PART 16—TYPES OF CONTRACTS

51. Section 16.000 is amended by revising the first sentence to read as follows:

16.000 Scope of part.

This part describes types of contracts that may be used in acquisitions other than those made under simplified acquisition procedures in Part 13, unless otherwise authorized by agency procedures. * * *

52. Section 16.103 is amended by revising paragraph (d)(1) to read as follows:

16.103 Negotiating contract type.

* * * *

(d) * * *

(1) acquisitions made under simplified acquisition procedures in Part 13, unless otherwise required under agency procedures,

* * * *

53. Section 16.105 is revised to read as follows:

16.105 Solicitation provision.

The contracting officer shall complete and insert the provision at 52.216-1,

Type of Contract, in a solicitation unless it is for:

(a) A fixed-price acquisition made under simplified acquisition procedures (see Part 13) or

(b) Information or planning purposes.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

54. Section 22.202 is amended in the introductory text by adding the phrase "except for purchases made at or below the micro-purchase threshold," after "contracts".

22.202 Contract clause.

55. Section 22.305 is amended by revising the first sentence of the introductory text and paragraph (a), removing paragraph (b) and redesignating paragraphs (c) through (h) as (b) through (g) to read as follows:

22.305 Contract clause.

The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. * * *

(a) Contracts at or below the simplified acquisition threshold.

* * * * *

22.1006 Contract clauses.

56. Section 22.1006 is amended by revising the heading to read as set forth above and by removing from the first two sentences of paragraphs (c)(1) and (c)(2) the phrase "small purchase limitation(s)" and inserting "simplified acquisition threshold(s)" in their places.

PART 23—ENVIRONMENT CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

57. Section 23.101 is amended by revising the first sentence to read as follows:

23.101 Applicability.

This subpart does not apply to contracts below the simplified acquisition threshold or to the use of facilities outside the United States. * * *

58. Section 23.501 is amended by revising paragraph (a) to read as follows:

23.501 Applicability.

* * * * *

(a) Contracts at or below the simplified acquisition threshold; however, the requirements of this

subpart shall apply to contracts of any value if the contract is awarded to an individual;

* * * * *

59. Section 23.504 is amended by revising the introductory text of paragraph (a) to read as follows:

23.504 Policy.

(a) No offeror other than an individual shall be considered a responsible source (see 9.104-1) for a contract that exceeds the simplified acquisition threshold, unless it has certified, pursuant to 52.223-5, Certification Regarding a Drug-Free Workplace by—

* * * * *

60. Section 23.505 is amended by revising paragraph (a)(2) and adding paragraph (c)(4) to read as follows:

23.505 Solicitation provision and contract clause.

* * * * *

(a) * * *

(2) Expected to exceed the simplified acquisition threshold if the contract is expected to be awarded to other than an individual; or

* * * * *

(c) * * *

(4) The resultant contract is expected to be at or below the simplified acquisition threshold.

PART 25—FOREIGN ACQUISITION

61. Section 25.302 is amended by revising paragraph (b)(1) to read as follows:

25.302 Policy.

* * * * *

(b) * * *

(1) The estimated cost of the product or service is at or below the simplified acquisition threshold in Part 13.

* * * * *

62. Section 25.703 is amended by revising the third sentence to read as follows:

25.703 Exceptions.

* * * The approval level for this exception is the contracting officer for acquisitions at or below the simplified acquisition threshold unless otherwise provided by agency procedures. In the case of contracts in excess of the simplified acquisition threshold, the approval level is the agency head. * * *

PART 27—PATENTS, DATA, AND COPYRIGHTS

63. Section 27.201-2 is amended by revising paragraph (a) to read as follows:

27.201-2 Clauses on authorization and consent.

(a) The contracting officer shall insert the clause at 52-227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when using simplified acquisition procedures or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when simplified acquisition procedures are used, it may be used with them.

* * * * *

64. Section 27.202-2 is revised to read as follows:

27.202-2 Clause on notice and assistance.

The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the simplified acquisition threshold, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.

65. Section 27.203-1 is amended by revising paragraph (b)(4) to read as follows:

27.203-1 General.

* * * * *

(b) * * *

(4) When the contract is awarded using simplified acquisition procedures.

* * * * *

PART 28—BONDS AND INSURANCE

66. Section 28.103-2 is amended by revising the first sentence of paragraph (a) to read as follows:

28.103-2 Performance bonds.

(a) Performance bonds may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. * * *

28.103-3 Payment bonds.

67. Section 28.103-3(a) is amended by removing the word "A" at the beginning of the paragraph and inserting the phrase "For acquisitions in excess of the simplified acquisition threshold a" in its place.

68. Section 28.310 is amended by revising paragraph (a) introductory text to read as follows:

28.310 Contract clause for work on a Government installation.

(a) The contracting officer shall insert the clause at 52.228-5, Insurance—Work on a Government Installation, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold in Part 13, and the contract will require work on a Government installation, unless—

* * * * *

PART 29—TAXES

69. Section 29.401-3 is revised to read as follows:

29.401-3 Competitive contracts.

The contracting officer shall insert the clause at 52-229-3, Federal, State, and Local Taxes, in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico when a fixed-price contract is contemplated, and the contract is expected to exceed the simplified acquisition threshold in 13.000, unless the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), is included in the contract.

29.401-4 [Amended]

70. Section 29.401-4 is amended by removing the words “small purchase limitation” after the words “exceeds the” and inserting the words “simplified acquisition threshold.”

* * * * *

PART 32—CONTRACT FINANCING

71. Section 32.617 is amended by revising paragraph (a)(1) to read as follows:

32.617 Contract clause.

(a) * * *

(1) Contracts at or below the simplified acquisition threshold.

* * * * *

72. Section 32.901 is revised to read as follows:

32.901 Applicability.

This subpart applies to all Government contracts (including contracts at or below the simplified acquisition threshold as defined in Subpart 13.1), except contracts with payment penalties established by other governmental authority (e.g., tariffs).

73. Section 32.908 is amended by revising paragraph (c) to read as follows:

32.908 Contract clause.

* * * * *

(c) The contracting officer shall insert the clause at 52.232-25, Prompt Payment, in all other solicitations and contracts (including contracts at or below the simplified acquisition threshold in Part 13), except as indicated in 32.901.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513, 36.515, 36.521, 36.602-5, and 36.702 [Amended]

74a. Part 36 amended by removing the phrase “exceed the small purchase limitation” and inserting “exceed the simplified acquisition threshold” in its place in the following locations:

36.502 36.509 36.515
36.503 36.510 36.521
36.506 36.512 36.602-5
36.508 36.513(a) 36.702(b)(2)

36.511, 36.701, 36.702 [Amended]

74b. Part 36 amended by removing the phrase “exceed the small purchase limitations” and inserting “exceed the simplified acquisition threshold” in the following locations: 36.511, 36.701(b), and 36.702(b)(2).

36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513, 36.521, 36.701, and 36.702 [Amended]

74c. Part 36 is amended by removing the phrase “within the small purchase limitation” and inserting “at or below the simplified acquisition threshold” in its place at the following locations: 36.502, 36.503, 36.506, 36.508, 36.509, 36.510, 36.512, 36.513(a), 36.515, 36.521, 36.602-5, 36.701(c).

36.511, 36.701, and 36.702 [Amended]

74d. Part 36 is amended by removing the phrase “within the small purchase limitations” and inserting “at or below the simplified acquisition threshold” in its place at the following locations: 36.511, 36.701(b), 36.702-(b)(2).

PART 41—ACQUISITION OF UTILITY SERVICES

75. In 41.201(b) the first sentence is revised to read as follows:

41.201 Policy.

* * * * *

(b) Except for acquisitions at or below the simplified acquisition threshold in Part 13, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of

service are fixed or adjusted by a regulatory body. * * *

* * * * *

PART 42—CONTRACT ADMINISTRATION

42.903 [Amended]

76. In 42.903 the phrase “small purchase limitation” is removed and “simplified acquisition threshold” is inserted in its place.

42.1104 [Amended]

77. In 42.1104(b), the phrase “Contracts of value less than the small purchase” is removed and “Contracts at or below the simplified acquisition threshold” is inserted in its place.

PART 43—CONTRACT MODIFICATIONS

43.205 [Amended]

78. In section 43.205(d)(2) and (e), the phrase “applicable small purchase limitation” is removed and “simplified acquisition threshold” is inserted in its place.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.201-2 and 44.204 [Amended]

79. In sections 44.201-2(b) and 44.204(e), the phrase “small purchase limitation is removed and “simplified acquisition threshold” is inserted in its place.

PART 45—GOVERNMENT PROPERTY

80. Section 45.106 is amended by revising paragraph (e) to read as follows:

45.106 Government property clauses.

* * * * *

(e) When the cost of the item to be repaired does not exceed the simplified acquisition threshold (but see 13.103(b)), purchase orders for property repair need not include a Government property clause.

* * * * *

PART 46—QUALITY ASSURANCE

46.202-1 [Amended]

81. In section 46.202-1(a), the phrase “under small purchases” is removed and “at or below the simplified acquisition threshold” is inserted in its place.

46.301 [Amended]

82. In section 46.301 in the introductory text the phrase “within the small purchase limitation” is removed and “at or below the simplified acquisition threshold” is inserted in its place.

46.302 [Amended]

83. In the first sentence of section 46.302 the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place; and in the second sentence the phrase "within the small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.304 [Amended]

84. In section 46.304 the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place and the phrase "within the small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.307 [Amended]

85. In Section 46.307(a)(3), the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place; and in paragraph (b) the phrase "within the small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.312 [Amended]

86. In the first sentence of section 46.312 the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place; and in the second sentence the phrase "within small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.316 [Amended]

87. In Section 46.316, the phrase "small purchase limitation" is removed and "simplified acquisition threshold" is inserted in its place; and in the second sentence the phrase "within small purchase limitation" is removed and "at or below the simplified acquisition threshold" is inserted in its place.

46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

88. Section 46.404 is amended by revising the heading; removing the words "small purchases" in paragraphs (a) and (b)(1) and inserting "contracts at or below the simplified acquisition threshold" in their place.

89. Section 46.805 is amended by revising the heading of the introductory text of paragraph (a) and revising paragraph (b) to read as follows:

46.805 Contract clauses.

(a) *Contracts that exceed the simplified acquisition threshold in 13.000.* * * *

(b) *Acquisitions at or below the simplified acquisition threshold in 13.000.* The clauses prescribed by paragraph (a) of this section are not required for contracts at or below the simplified acquisition threshold in 13.000. However in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in paragraph (a)(1) or (a)(4) of this section in a contract at or below the simplified acquisition threshold in 13.000 and obtain any price reduction that is appropriate.

PART 47—TRANSPORTATION

90. Section 47.104-4(a)(2), is amended by removing the phrase "small purchases under" and inserting "contracts at or below the simplified acquisition threshold in" in its place; and revising paragraph (b) to read as follows:

47.104-4 Contract clause.

(b) The contracting officer may insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts made at or below the simplified acquisition threshold in Part 13 when it is contemplated that the delivery terms will be f.o.b. origin.

47.200 [Amended]

91. In 47.200(b)(4), remove the phrase "Small purchases under" and insert "Contracts at or below the simplified acquisition threshold in" in its place.

47.205 [Amended]

92. In section 47.205, paragraph (b), remove the phrase "small purchase limitation" and insert "the threshold for use of simplified acquisition procedures in Part 13" in its place; and remove the phrase "the small purchase procedures" and insert "simplified acquisition procedures" in its place.

47.305-16 [Amended]

93. In the first sentence of 47.305-16(b)(1) remove the phrase "awarded under small purchase procedures of" and insert "at or below the simplified acquisition threshold" in its place.

94. Section 47.405 is revised to read as follows:

47.405 Contract clause.

The contracting officer shall insert the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that

U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to contracts awarded using the simplified acquisition procedures in Part 13.

95. Section 47.504 is amended by revising paragraph (d) to read as follows:

47.504 Exceptions.

* * * * *

(d) Contracts awarded using the simplified acquisition procedures in Part 13.

PART 49—TERMINATION OF CONTRACTS**49.504 [Amended]**

96. In section 49.504 at paragraphs (a)(1), (b) and (c)(1) in the first sentence remove the phrase "small purchase limitation" and insert "simplified acquisition threshold" in its place; and in the second sentence remove the phrase "not expected to exceed the small purchase limitation" and insert "at or below the simplified acquisition threshold;"

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**52.203-6 [Amended]**

97. In the clause at 52.203-6 the date of the clause is revised to read (XXX 1995) and at the end of paragraph (c) add the phrase ", which exceed \$100,000."

52.203-7 [Amended]

98. In the clause at 52.203-7 the date of the clause is revised to read (XXX 1995) and at the end of paragraph (c)(5) add the phrase ", which exceed \$100,000."

52.209-6 [Amended]

99. In the clause at 52.209-6 the date of the clause is revised to read (XXX 1995) and in the second sentence of paragraph (a) and in paragraph (b) remove the phrase "small purchase limitation" and insert "simplified acquisition threshold."

100. Sections 52.213-2 and 52.213-3 are amended by revising the introductory paragraphs to read as follows:

52.213-2 Invoices.

As prescribed in 13.507(b), insert the following clause:

* * * * *

52.213-3 Notice to Supplier.

As prescribed in 13.507(c), insert the following clause in unpriced purchase orders:

* * * * *

52.215-1 [Amended]

101. In the clause at 52.215-1 the date of the clause is revised to read (XXX 1995) and in the first sentence of paragraph (c) after the first appearance of "subcontracts" add the phrase "exceeding \$100,000,".

52.215-2 [Amended]

102. In the clause in section 52.215-2, the date is revised to read (XXX 1995) and in paragraph (f) remove the phrase "are over the small purchase limitation" and insert "exceed the simplified acquisition threshold" in its place.

103. Section 52.216-1 is amended by revising the introductory paragraph to read as follows:

52.216-1 Type of contract.

As prescribed in 16.105, complete and insert the following provision:

* * * * *

52.222-4 [Amended]

104. In the clause at 52.222-4 the date is revised to read (XXX 1995) and in the first sentence of paragraph (e) following "subcontracts" the first time it appears add the phrase "exceeding \$100,000,"

105. Section 52.223-5 is amended in the clause by revising the date and revising paragraph (b) introductory text to read as follows:

52.223-5 Certification regarding a drug-free workplace.

* * * * *

Certification Regarding a Drug-Free Workplace (XXX 1995)

* * * * *

(b) By submission of its offer, the offeror (other than an individual responding to a solicitation that is expected to exceed the simplified acquisition threshold), certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed—

* * * * *

52.227-1 [Amended]

106. In the clause at section 52.227-1, revise the clause date to read "(XXX 1995)" and paragraph (b) remove "\$25,000" after the word "exceed" and insert "the simplified acquisition threshold" in its place; and remove the phrase "under or over \$25,000" and insert "including those at or below the simplified acquisition threshold" in its place.

52.227-3 [Amended]

107. In section 52.227-3, Alternate III, revise the clause date to read "(XXX 1995)" and remove "\$25,000" and insert "the simplified acquisition threshold" in its place

108. The introductory paragraphs in sections 52.236-2, 52.236-3, 52.236-6, 52.236-8, 52.236-9, 52.236-10, 52.236-11, 52.236-12, 52.236-15, 52.236-21, and 52.243-5 are revised to read as follows:

52.236-2 Differing site conditions.

As prescribed in 36.502, insert the following clause:

* * * * *

52.236-3 Site investigation and conditions Affecting the Work.

As prescribed in 36.503, insert the following clause:

* * * * *

52.236-6 Superintendence by the contractor.

As prescribed in 36.506, insert the following clause:

* * * * *

52.236-8 Other contracts.

As prescribed in 36.508, insert the following clause:

* * * * *

52.236-9 Protection of existing vegetation, structures, equipment, utilities, and improvements.

As prescribed in 36.509, insert the following clause:

* * * * *

52.236-10 Operations and storage areas.

As prescribed in 36.510, insert the following clause:

* * * * *

52.236-11 Use and possession prior to completion.

As prescribed in 36.511, insert the following clause:

* * * * *

52.236-12 Cleaning up.

As prescribed in 36.512, insert the following clause:

* * * * *

52.236-15 Schedules for construction contracts.

As prescribed in 36.515, insert the following clause:

* * * * *

52.236-21 Specifications and drawings for construction.

As prescribed in 36.521, insert the following clause:

* * * * *

52.243-5 Changes and changed conditions.

As prescribed in 43.205(e), insert the following clause:

* * * * *

52.244-2 [Amended]

109. In section 52.244-2, Alternate I, revise the parenthetical date to read "(XXX 1995)" and in paragraph (a)(2) remove the phrase "small purchase limitation" and insert "simplified acquisition threshold" in its place.

110. Section 52.244-5 is amended by revising the introductory text and removing paragraphs (a) and (b) to read as follows:

52.244-5 Competition in subcontracting.

As prescribed in 44.204(e), insert the following clause:

* * * * *

111. The introductory paragraphs of sections 52.246-1, 52.246-7, 52.246-12, 52.246-16, 52.246-23, 52.246-24, and 52.246-25 are revised to read as follows:

52.246-1 Contractor inspection requirements.

As prescribed in 46.301, insert the following clause:

* * * * *

52.246-7 Inspection of research and development-fixed price.

As prescribed in 46.307(a), insert the following clause:

* * * * *

52.246-12 Inspection of construction.

As prescribed in 46.312, insert the following clause:

* * * * *

52.246-16 Responsibilities for suppliers.

As prescribed in 46.316, insert the following clause:

* * * * *

52.246-23 Limitation of liability.

As prescribed in 46.805, insert the following clause:

* * * * *

52.246–24 Limitation of liability-high-value items.

As prescribed in 46.805, insert the following clause:

* * * * *

52.246–25 Limitation of liability-services.

As prescribed in 46.805, insert the following clause:

* * * * *

112. Section 52.247–1 is amended by adding the introductory paragraph and removing paragraphs (a) and (b) to read as follows:

52.247–1 Commercial bill of lading notations.

As prescribed in 47.104–4, insert the following clause:

* * * * *

52.247–64 [Amended]

113. In the clause at section 52.247–64, the date is revised to read “(XXX 1995)”; in paragraph (d) remove the words “small purchases” and insert “contracts at or below the simplified acquisition threshold” in their place; and in paragraph (e)(1), remove the words “Small purchases” and insert “Contracts at or below the simplified acquisition threshold” in their place.

114. In sections 52.249–8, 52.249–9, and 52.249–10 the introductory paragraphs are revised to read as follows:

52.249–8 Default (Fixed-price supply and service).

As prescribed in 49.504(a)(1), insert the following clause:

* * * * *

52.249–9 Default (Fixed-price research and development).

As prescribed in 49.504(b), insert the following clause:

* * * * *

52.249–10 Default (Fixed-price construction).

As prescribed in 49.504(c)(1), insert the following clause:

* * * * *

PART 53—FORMS

115. Section 53.213 is amended by revising the heading, the introductory paragraph, and paragraphs (a), (c), and (e)(1) to read as follows:

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

The following forms are prescribed as stated below for use in simplified acquisition procedures, orders under existing contracts or agreements, and orders from required sources of supplies and services;

(a) SF 18 (Rev. 5/93), Request for Quotations. SF 18 prescribed in 53.215–1(a), shall be used in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107(a).

* * * * *

(c) SF 44 (Rev. 10/83), Purchase Order Invoice Voucher. SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.505–3.

* * * * *

(e) * * *

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.505–1(a)(2).

* * * * *

116. Section 53.215–1 is amended by revising the introductory paragraph to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations.

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

* * * * *

[FR Doc. 95–5451 Filed 3–3–95; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Parts 2, 4, 5, 7, 8, 9, 12, 14, 15, 16, 32, 45, 52, and 53

[FAR Case 91–104]

Federal Acquisition Regulation; Electronic Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address the use of electronic commerce/electronic data interchange in Government contracting. This regulatory action was subject to Office of Management and Budget review pursuant to Executive Order No. 12866 dated September 30, 1993.

DATES: Comments should be submitted to the FAR Secretariat at the address

shown below on or before May 5, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite FAR case 91–104 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR Case 91–104.

SUPPLEMENTARY INFORMATION:**A. Background**

A proposed rule was published in the **Federal Register** at 58 FR 69588, December 30, 1993. The rule proposed amendments to the FAR to remove any barriers to the use of electronic data interchange in Government contracting. Thirty-six comments from ten respondents were received during the public comment period. After evaluating the public comments, the Councils agreed to publish another proposed rule, because significant changes to the rule published on December 30, 1993, were deemed to be necessary. The changes include:

- Revision of the definition of “in writing” or “written” at 2.101 to include electronically transmitted and stored information.
- Revision of the definition of “signature” at 2.101 for clarity and to include electronic symbols.
- Addition of a definition of “electronic commerce” at 4.301.
- Amendment of section 5.101 to permit the use of electronic dissemination, available to the public at the contracting office, to satisfy the requirement for public display of proposed contract actions.
- Amendment of section 5.102 to permit contracting officers to furnish solicitations directly to the electronic address of a small business concern.
- Amendment of sections 12.103, 14.304–1, 52.212–1, 52.212–2, 52.214–7, 52.214–23, 52.214–32, 52.214–33, 52.215–10, and 52.215–36 to accommodate the use of electronic systems which batch-process communications overnight and, therefore, require receipt of information one day in advance to ensure timely delivery to the designated address.
- Revision of paragraph (a) of section 14.205–1 to eliminate the requirement